IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 5, 2008 Session

IN RE A. G.

Appeal from the Juvenile Court for Davidson County
No. 2003-2210 Donna Scott Davenport, Judge

No. M2007-0799-COA-R3-JV - Filed September 28, 2009

The trial court found the mother of a nine year old girl in criminal contempt for withholding visitation from the child's father and imposed a forty day sentence. The court suspended the sentence, contingent upon the mother's strict compliance with the court's orders. Because she failed to comply, the suspension was lifted, and she served nine days of her sentence prior to a new suspension. By that time, custody of the child had been transferred to the father, and the mother was ordered to pay him child support. The father filed a motion to lift the suspension of the remainder of the sentence because of the mother's failure to pay the ordered child support. After a hearing the trial court ordered Mother to serve the remainder of the sentence. Mother's appeal of the order lifting the suspension is not justiciable since she served the entire sentence. The father later filed another contempt petition for non-payment of child support. Neither the mother nor her attorney appeared at the scheduled contempt hearing, and the trial court pronounced judgment, holding the mother in contempt and sentencing her to an additional forty days. Mother argues on appeal that the trial court deprived her of her due process rights. We affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Bobby A. McGee, Linden, Tennessee, for the appellant, C.G.

Stephen Mills, Nashville, Tennessee, for the appellee, M.H.

OPINION

I. A DISPUTE OVER PARENTING ARRANGEMENT

This appeal arises from a prolonged dispute over the parenting arrangement for the parties' daughter which has involved a number of proceedings brought by the mother in several fora. There have been at least four other appeals to this court.[1]

The appeal before us involves two separate findings of contempt. Each of those contempt rulings was the subject of a separate appeal, which we have consolidated for purposes of judicial economy. In order to adequately address the issues, we must briefly summarize some of the prior proceedings in this case.

A. G., the child at the center of this appeal, was born in November of 1998 after a brief relationship between C.G. ("Mother") and M. H. ("Father"). Shortly after the child's birth, Mother filed a petition in the Circuit Court of Davidson County to establish paternity. Following the adjudication of paternity, Father requested and was granted visitation with A.G. He was also ordered to pay child support. In 2003, Mother filed a petition in the Juvenile Court of Davidson County in which she claimed that A.G. was dependent and neglected and that Father had abused the child. She asked the court to give her exclusive custody of A.G. and to suspend Father's visitation.

In subsequent proceedings, Mother's allegations of abuse were determined to be unfounded, and her conduct brought into question her own fitness for parental responsibilities. She was warned that any attempts to thwart Father's visitation would be considered in any future proceeding on a parenting arrangement, but she ignored the warning. On December 15, 2004, Father filed a petition for change of primary residential parent. In May of 2005, the court conducted a two day hearing on the petition, after which it ordered the parties to share joint custody, although it allowed Mother to remain the primary residential parent. The court also prohibited both parties from doing anything to undermine the other party's relationship with A.G.

On October 28, 2005, Father filed a petition for emergency removal of A.G. from Mother's custody. He alleged, among other things, that Mother had refused to communicate with the guardian ad litem, that earlier in the month she had willfully denied him four days of court-ordered visitation with the child, and that she was a flight risk. Father asked the court to transfer permanent physical custody of A.G. to him and to find Mother in criminal contempt for four violations of the court's orders, one violation for each day of visitation that was denied. The court granted Father temporary custody of A.G., but did not rule on the question of criminal contempt at that time.

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[1] In fact, our opinion in this case is being filed on the same day as our opinion in a related case, *In the Matter of A.G.,* No. M2008-00879-COA-R3-CV. Mother had requested that this court consider the appeals together since a decision in one could moot the other.

Mother then filed an "Emergency Motion" for the recusal of Davidson County Juvenile Court Judge Betty Adams Green. Judge Green recused herself, and Judge Donna Scott Davenport of the Rutherford County Juvenile Court was appointed to sit by interchange.

II. The First Finding of Criminal Contempt

The next relevant proceeding for our purposes was a hearing conducted on August 28, 2006 in the Juvenile Court of Davidson County. The court heard proof on both Father's petition for change of custody and on the allegations of contempt that had not been resolved. Father was represented by counsel, and Mother chose to appear *pro se*.[2] The guardian ad litem represented the interests of A.G. Both Father and Mother testified, as did a Sumner County detective who had investigated Mother's allegations of child abuse, an administrator at A.G.'s school, the director of supervised visitation at the Exchange Club in Nashville, A.G.'s therapist, and Father's girlfriend of seven years.

The court heard evidence which indicated, among other things, that Mother had continued to make inappropriate statements to A.G. during supervised visitation, that she had discussed the case with A.G. despite being ordered not to, that she had written and mailed cards containing inappropriate comments to A.G., and that she had published allegations on her website that Father had abused the child. The court found that Mother had willfully interfered with Father's relationship with A.G. and that this constituted a material change of circumstances. The court also found that it was in A.G.'s best interest that Father be named as the child's primary residential parent. In addition, the court ordered Mother to pay Father child support of $445 per month in accordance with the child support guidelines.

The court also found that Mother had knowingly and willfully withheld four days of visitation from Father, and it ordered her to serve forty days in jail. Her sentence was suspended after she served nine days, on the condition that she comply with the court's orders, including the requirement that she remove any reference to Father or to A.G from her website, pay child support as ordered, and refrain from disparaging Father.

On December 7, 2006, Father filed a motion asking the court to impose the remainder of the sentence it had suspended. He alleged that Mother had failed to comply with the court's order by failing to make four months of child support payments. The motion was served on Mother's then attorney of record, who subsequently withdrew from representation. Mother retained a new attorney, Mr. McGee, who filed a notice of appearance as Mother's attorney of record and a request that the scheduled hearing on Father's motion be continued. Father then filed a new motion to impose

[2] The record indicates that in October of 2005 the court offered to appoint an attorney to represent Ms. Grablis on the criminal contempt. Ms. Grablis declined, declaring that she would obtain her own attorney. At different times during the course of this case, she retained four different attorneys. However she appeared *pro se* at the hearing of August 28, 2006, and moved the court to grant her a continuance so she could find an attorney to represent her. The court denied her motion and ordered the hearing to proceed as scheduled.

sentence, which included a new hearing date and time, and served the motion on Mr. McGee, who filed a response.

The hearing on Father's motion was conducted on February 26, 2007. Mother's attorney, Mr. McGee, called the court to state that he would be late for the hearing, which was scheduled for 12:30 p.m.,[3] but ". . . due to time constraints, this court elected to proceed at the scheduled time and found that Mr. McGee's tardiness was not acceptable." Neither Mother nor her attorney was present at the hearing, and the court proceeded in their absence.[4] The court heard evidence and documented its findings in an order dated March 7, 2007.

The court found that the evidence showed beyond a reasonable doubt that Mother had not complied with its orders to make child support payments "despite having the capacity to pay as ordered." The court accordingly lifted the suspension and ordered Mother to serve the remaining 31 days of her sentence. A mittimus was issued to immediately take Mother into custody to serve her sentence. She was also ordered to pay Father $3,150 for unpaid child support. Mother filed a notice of appeal to this court, which is part of this consolidated appeal. Mother served her full sentence.

III. The Second Contempt Finding

On April 3, 2007, Father filed another petition for criminal contempt based upon allegations that Mother had failed to pay child support. Father alleged that Mother had failed to pay the ordered support for the months of September through December of 2006 and January and February of 2007, for six possible counts of criminal contempt.

A hearing on the contempt charges was scheduled for April 18, but Mr. McGee asked to have the matter reset for a later date. The judge had to made special arrangements in order to schedule the hearing and set it for the court's lunch hour at noon on May 1, 2007. On that day, Mr. McGee called the judge's office and stated that he had been ill the previous night and would be arriving late. Father and his attorney were present, but neither Mr. McGee nor Mother arrived by noon. At 12:30 p.m., the judge decided to proceed because she "had a long afternoon docket to preside over and could not delay this matter any longer."

Once again, the court heard proof, and it found beyond a reasonable doubt that Mother was in contempt for willfully failing to pay child support in October, November and December of 2006 and January 2007. She was sentenced to serve ten days for each violation, or forty days total. The court also awarded Father an additional judgment of $990 for unpaid child support up to the time of the hearing.

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[3] The court gave a thorough description of the resetting of the hearing, the court's crowded docket, the presence of Mother's attorney at the hearing when the date was set, and the existing demands on the court's time on the day of the hearing.

[4] It is unclear from the record why Mother did not appear for the hearing.

An appeal of the second finding of contempt was filed. Upon Mother's motion, this court stayed Mother's sentence pending the results of the appeal. Father moved, without objection, to have the two appeals consolidated, and this court granted the motion.

IV. Analysis

A. The Lifting of the Suspended Sentence

Mother does not argue in this appeal that the first conviction of criminal contempt was invalid or that the forty day sentence was excessive.[5] She contends, however, that the trial court deprived her of due process when it lifted the suspension of that sentence at a hearing where neither she nor her attorney was present and ordered her to serve the remainder of the sentence day for day. Mother correctly states a bedrock principle of due process: before being deprived of a liberty interest, a party must be given proper notice and an opportunity to be heard. *Johnson v. Mississippi*, 403 U.S. 212, 215 (1971); *Black v. Blount*, 938 S.W.2d 394, 398 (Tenn. 1996); *Varley v. Varley*, 934 S.W.2d. 659, 664 (Tenn. Ct. App. 1996).

However, Mother was not deprived of due process in the proceeding at issue because she received ample notice and the opportunity to appear in person and through counsel.

The record shows that Father served a motion to impose sentence on Mother's attorney of record. That motion stated as grounds for imposing sentence that Mother had failed to make four months of court-ordered child support payments. The motion included notice of the date (December 20, 2006), time and place of the hearing on the motion. Mother's attorney withdrew from representation, and she retained Mr. McGee, who then asked that the matter be reset. Father then filed another motion to impose sentence and included notice of a new hearing date (February 27, 2007). The new motion did not mention child support, but only that Mother had failed to comply with the court's orders. Mr. McGee filed a response to the motion.

Mother complains that the notice that was served on Mr. McGee was not specific enough because the motion did not specifically state the grounds Father was relying on to lift the sentence suspension. Indeed, in his response, Mr. McGee had asserted that the motion did not specify the ways in which Mother was alleged to have violated the court order. Mother does not deny, however, that the motion served on her former lawyer did specifically refer to non-payment of child support. When Mr. McGee became counsel of record, he had a duty to familiarize himself with the contents of the record. Mr. McGee had asked that the hearing be reset, and the second notice was intended merely to inform him and his client of the new date. Mother has not directed our attention to any authority for the proposition that each and every hearing notice contain all the specifics as to the alleged violations relied upon. Additionally, this was a motion to impose a previously suspended

[5] There is no appeal pending that challenges the order finding her in contempt and setting the sanction. Mother apparently did file an appeal of that conviction, but later dismissed it. The time for filing an appeal from that judgment is long past.

sentence; it was not a petition for a finding of criminal contempt. Mother had already been found in contempt, and that finding is not on appeal.

Father and his attorney were present at the appointed date and time; Mother and her attorney were not. Mother's attorney called the court to state that he would be late for the hearing. Mother did not offer any explanation for her absence. There were many other cases on the docket that day, and the court chose to proceed, having accommodated the parties by re-setting the hearing. After hearing testimony by Father, the court lifted the suspension of sentence and ordered Mother to serve the remainder of her forty-day sentence. Mother argues that by proceeding in her absence the court deprived her of an opportunity to be heard.

We note that since Mother had already been convicted and sentenced for criminal contempt, the only question at issue was the imposition of the previously imposed sentence. Our courts have stated that a defendant whose guilt has already been established and is facing proceedings for the revocation of probation or parole entitled to less than "the full panoply of rights due a defendant in criminal prosecutions." *State v. Wade*, 863 S.W.2d 406, 408 (Tenn. 1993) (citing *Black v. Romano*, 471 U.S. 606, 613 (1985)). Nonetheless, the rights Mother was entitled to included an opportunity to be heard. The record shows that she was given ample opportunity; she just did not take advantage of it. The court did not prevent her appearance or that of her counsel; to the contrary, the court tried to accommodate Mother and her attorney within the busy docket of the court.

Finally, and most importantly, the record shows that Mother has already served the full forty days of her first sentence for contempt. Thus, even if we believed that the trial court committed reversible error in ordering her to serve the remainder of her sentence, which we do not, it is unclear what meaningful relief lies within the power of this court to give her at this point. To all intents and purposes, her first issue is moot. She did not challenge the fact of her conviction of contempt or the length of the incarceration initially imposed. This appeal merely challenges the order "lifting" the suspension of a portion of her sentence.

A case will be considered moot if it no longer serves as a means to provide some sort of relief to the party who may prevail or if it no longer presents a present, live controversy. *McCanless v. Klein*, 182 Tenn. 631, 188 S.W.2d 745, 747 (1945). Where a matter has been resolved, that claim must be dismissed at moot. *County of Shelby v. McWherter,* 936 S.W.2d 923, 931 (Tenn. Ct. App.1996).

> A case is not justiciable if it does not involve a genuine, continuing controversy requiring the adjudication of presently existing rights. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn. Ct. App. 1998).
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> A moot case is one that has lost its justiciability because it no longer involves a present, ongoing controversy. *McCanless v. Klein,* 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); *County of Shelby v. McWherter,* 936 S.W.2d 923, 931 (Tenn. Ct.

> App.1996). A case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party. *Knott v. Stewart County,* 185 Tenn. 623, 626, 207 S.W.2d 337, 338-39 (1948); *Ford Consumer Fin. Co. v. Clay,* 984 S.W.2d at 616. Determining whether a case is moot is a question of law. *Charter Lakeside Behavioral Health Sys. v. Tennessee Health Facilities Comm'n,* 2001 WL 72342, at *5; *Orlando Residence, Ltd. v. Nashville Lodging Co.,* No. M1999-00943-COA-R3-CV, 1999 WL 1040544, at *3 (Tenn. Ct. App. Nov.17, 1999) (No Tenn. R. App. P. 11 application filed).

Alliance for Native American Indian Rights in Tenn., Inc. v. Nicely, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005).

Mother's appeal of the imposition of the portion of a sentence that had been suspended is moot since she has served that sentence. Accordingly, that portion of this consolidated appeal should be dismissed.

B. The Imposition of the Second Sentence For Contempt

Mother raises several issues to contest the imposition of the second forty-day sentence for criminal contempt upon her. Among other things, she contends that since the first order of child support in this case was issued by the Davidson County Circuit Court, the juvenile court did not possess the subject matter jurisdiction necessary to impose a sentence for criminal contempt based upon disobedience to a child support order. She neglects to mention that she herself filed a dependency and neglect petition in the Juvenile Court of Davidson County and that the child support order that the court found her to have disobeyed was issued by that court when it transferred primary residential placement of A.G. to Father.

Tenn. Code Ann. § 37-1-103(a) gives the juvenile court exclusive original jurisdiction in dependency and neglect actions. Tenn. Code Ann. § 37-1-104(f) provides that the juvenile court has concurrent jurisdiction with the circuit and chancery courts to "to determine any custody, visitation, support, education or other issues regarding the care and custody of children born out of wedlock. The court further has the power to enforce its orders." Mother's jurisdictional argument is, therefore, without merit.

Mother also relies on a due process argument to contest the holding of contempt and the imposition of the forty day sentence. As we discussed above, the contempt hearing was set for one date (April 18, 2007), but was continued to another date upon the request of Mother's attorney. On April 17, 2007 two additional attorneys had entered their notices of appearance as co-counsel of record with Mr. McGee. Thus, as of the date of the re-set hearing, Mother was represented by three attorneys.

As Judge Davenport noted, she had made special arrangements in order to schedule the hearing for noon on May 1, 2007, and she had a long afternoon docket to preside over. On the day

of the hearing, Mr. McGee called the judge's office and stated that he had been ill the previous night and would be arriving late. Father and his attorney were present at the appointed time, but neither Mr. McGee, nor either of his co-counsel, nor Mother, arrived. At 12:30 p.m., the judge decided to proceed because she "could not delay this matter any longer." The court heard proof about Mother's failure to pay court-ordered child support, found her in contempt, and sentenced her to forty days in the Davidson County Jail.

Mother argues that as a result of the court's decision to proceed in the absence of an attorney, she was deprived of her liberty by an *ex parte* proceeding and that she was denied her right to counsel. Her arguments are without merit. "A judicial proceeding, order, injunction, etc., is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested." BLACK'S LAW DICTIONARY, West Publishing Co. (5th Ed., 1979). In this case, Mother and her counsel received ample notice of the hearing of May 1, 2007, and, thus, it cannot be accurately characterized as an *ex parte* hearing.

Both the United States and Tennessee Constitutions contain a guarantee of the right of counsel to accused persons. U.S. Const., Amendment Six; Tenn. Const. art. I, § 9; *Martinez v. Court of Appeals of California*, 528 U.S. 152 (2000); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *State v. Small*, 988 S.W.2d 671, 673 (Tenn. 1999). However, our courts have not looked kindly on those who would use that right "to manipulate or toy with the judicial system," or "as a license to manipulate, delay or disrupt a trial." *State v. Carruthers*, 35 S.W.3d 516, 549 (Tenn. 2000).

The record shows that Mother had three different attorneys of record on the date of the hearing in dispute. It was not the responsibility of the trial court, nor did it possess the power, to make sure that at least one of Mother's attorneys appeared for the scheduled hearing. As we noted above, neither Mr. McGee nor Mother had appeared on time for the previous hearing on February 28, 2007, and the court had proceeded in their absence. That experience should have made them both aware that the court was serious about keeping to its schedule. Yet, once again, neither of them appeared at the appointed time.

In the case of *State v. Chadwick*, 450 S.W.2d 568, 570 (Tenn. 1970), our Supreme Court affirmed a conviction for burglary and a sentence of three to ten years in the State Penitentiary against a defendant who fired his counsel in the middle of trial. The defendant argued that it was unjust to try him without proper representation, but the court stated that,

> Though a defendant has a right to select his own counsel if he acts expeditiously to do so, he may not use this right to play a 'cat and mouse' game with the court, or by ruse or stratagem fraudulently seek to have the trial judge placed in a position where, in moving along the business of the court, the judge appears to be arbitrarily depriving the defendant of counsel. (citations omitted)

State v. Chadwick, 450 S.W.2d at 570

The decision of a trial court to proceed with a regularly scheduled contempt hearing in the absence of the defendant and/or her counsel does not automatically constitute reversible error. Rather, it must be reviewed by the same standard we use for reviewing a court's decision on a motion for a continuance - the abuse of discretion standard.

> Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to [the] propriety of the decision made." A trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court.

Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001)(citations omitted). *See also Keisling v. Keisling,* 196 S.W.3d 703, 726 (Tenn. Ct. App. 2005).

Because a trial court's decision to grant or deny a motion for continuance is very fact-specific, "motions for a continuance should be viewed in the context of all the circumstances existing when the motion is filed." *Nagarajan v. Terry*, 151 S.W.3d 166, 172 (Tenn. Ct. App. 2003). In this case, Mother did not formally move for a continuance, but her attorney's call that he would be late was, in effect, a request to delay the hearing. The same principles apply to this situation as to one involving a decision on such a motion.

Our courts have attempted to articulate the kinds of circumstances under which a denial of a continuance would constitute an abuse of discretion and have come up with just a few. In the context of civil litigation, this court has stated that in order to show abuse of discretion, a party must demonstrate some prejudice or surprise which arises out of the trial court's failure to grant a continuance. *Barber & McMurry v. Top-Flite Development Co.*, 720 S.W.2d 469, 471 (Tenn. Ct. App. 1986). We have set out a list of factors which the trial courts may consider when determining whether to grant or deny a motion to continue. These are, "(1) the length of time the proceedings have been pending, (2) the reasons for the continuance, (3) the diligence of the parties seeking the continuance, and (4) the prejudice to the requesting party if the continuance is not granted." *Nagarajan v. Terry*, 151 S.W.3d at 172.

A party seeking a continuance must carry the burden of explaining the circumstances that prevented him from being ready for trial at the scheduled time. *Osagie v. Peakload Temporary Services,* 91 S.W.3d 326, 329 (Tenn. Ct. App. 2002). Such an explanation requires a "strong excuse" to justify a postponement. *Barber & McMurry v. Top-Flite Development Co.*, 720 S.W.2d at 471. In the present case, Mother did not offer any explanation at all for her non-appearance, and her attorney simply explained that he would be late because he was ill the night before. There was no argument addressing the *Nagarajan* factors. If a trial court's rejection of Mother's argument herein were deemed to be an abuse of its discretion, we would risk bringing the judicial system to a standstill, since any party that wished to avoid or delay a legal proceeding could easily do so.

We hold that under the circumstances of this case, the trial court did not err in proceeding with the contempt hearing which had been rescheduled at Mother's request.

Mother also argues that there was no proof that she had the means to pay the ordered child support, and, therefore, that the trial court erred in finding that she willfully failed to comply with its order. It is well settled that in order to find a person guilty of criminal contempt for failure to pay child support, it must be proven beyond a reasonable doubt that the parent had the ability to pay and willfully refused to do so. *Cottingham v. Cottingham*, 193 S.W.3d 531, 538 (Tenn. 2006) (holding that to support a finding of contempt, the prosecution was required to prove beyond a reasonable doubt that the obligor had the ability to pay at the time it was due and that his failure to pay was willful); *Ahern v. Ahern*, 15 S.W.3d 73, 79 (Tenn. 2000) (holding that the court first must determine that the obligor had the ability to pay at the time the support was due and then determine that the failure to pay was willful).

While there is authority for the principle that the burden of coming forward with proof of inability to pay child support in contempt cases lies with the party claiming to lack that ability. *Leonard v. Leonard*, 341 S.W.2d 740, 743 (Tenn. 1960); *Pirrie v. Pirrie*, 831 S.W.2d 296, 298 (Tenn. Ct. App. 1992); *Gibson v. Prokell,* No. 02A01-9701-CH-00006, 1997 WL 759446 at *8 (Tenn. Ct. App. Dec. 10, 1997) (Tenn. R. App. P 11 perm. app. den. June 8, 1998), the Tennessee Supreme Court's directive in *Cottingham* and *Ahern* must prevail.

That does not mean, however, that the party against whom the petition for contempt is brought can avoid a finding of contempt by remaining silent, or, as here, fail to appear, in the face of some proof of ability to pay by the petitioner. In the case before us, the amount of child support Mother was to pay was set in an order resulting from a hearing held August 28, 2006, based upon the child support guidelines and, presumably, evidence regarding the parties' incomes. That order was not appealed.[6] In an order entered just two months previously, the trial court had found that mother had failed to pay support "despite having the capacity to pay as ordered." Father testified that Mother had paid no support since the initial order that she pay support and that he knew of no reason why Mother would not be able to pay. Father also introduced a copy of an appeal bond Mother had recently posted with $1000 in cash in another of her appeals.

Mother did not appear at the hearing and did not raise any issue about her ability to pay. In her answer and amended answer to the petition for contempt, while admitting that she had never paid any support, she never raised as a defense her inability to pay.[7] Mother has never plead or otherwise put before the court any circumstance that would have made her unable to pay even some portion of the ordered support.

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[6] Mother made an untimely attempt to appeal that order, which was the subject of the opinion released with this one.

[7] Instead, she argued that the order setting support was void and that she was being subjected to double jeopardy.

We conclude that the trial court had sufficient evidence before it, considering the circumstances of the case, to find that Mother had willfully failed to pay child support as ordered. Consequently, we affirm the trial court's finding of contempt.

Finally, at oral argument there was some discussion of the total amount of the judgments for arrearage that were part of the two orders under appeal. A reading of the transcript of the second hearing shows that the trial court found that Mother had made no payments for the months of September through December of 2006 and for January through May of 2007, for a total of nine months. Recognizing that it had already entered judgments for nine months' arrearage, the court reduced the arrearage for the additional two months. It would appear that the trial court erred in its calculation, awarding $990, when two months of support of $445 is $890. Accordingly, we modify the judgment of May 29, 2007 to reflect a judgment of $890.

VI.

The judgment of the trial court is affirmed as modified. We remand this case to the Juvenile Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant, C. G.

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PATRICIA J. COTTRELL, P.J., M.S.